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Reigning Supreme: Events at the UK Supreme Court in 2015

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The Supreme Court in 2015

For the second year running there were no changes in the composition of the Supreme Court during 2015, though the highly respected Jenny Rowe retired as the Court's Chief Executive. There continues to be just one female Justice, Lady Hale, and the average age of the 12 Justices has crept up to 67. There will be at least one change in 2016, as Lord Toulson must retire by September.

Cases decided

In 2015 the Court delivered judgments in 79 cases, compared with 68 in 2014 and 81 in 2013. As usual, most cases (65, or 82%) were heard by five Justices, but 13 were heard by seven. In one case, dealing with a costs issue, only three Justices sat. No case involved nine Justices. The President of the Court, Lord Neuberger, presided in 60 of the 79 cases (76%) and the Deputy President, Lady Hale, presided in 16 (20%). The President and Deputy President sat together in 27 cases (34%). Lord Mance presided in two cases and Lord Kerr in one.

In five cases an *ad hoc* Justice was appointed: Lord Dyson MR sat twice, as did Lord Gill, the Lord President and Lord Justice General in Scotland who shortly afterwards retired. Lord Thomas CJ sat in an important case concerning the powers of the Welsh Assembly ([2015] UKSC 3), though no judge with a Welsh background sat in a negligence case defended by the Chief Constable of Wales ([2015] UKSC 2).

Source of appeals

The total number of separate appeals heard was 81, of which 67 derived from the courts of England and Wales, 11 from Scotland and three from Northern Ireland. The latter two figures were exactly the same as in 2014. There was only one leapfrog appeal direct from the High Court (*Beghal v DPP* [2015] UKSC 59).

As is now the norm, the Supreme Court very largely determined its own docket in 2015. Only three of the 81 appeals reached the Court because the Court of Appeal had granted permission to appeal. These were the important cases of *R (Evans) v Attorney General* [2015] UKSC 21 (holding that the Prince of Wales' correspondence with government Ministers could be disclosed under the Freedom of Information Act 2000), *ParkingEye v Beavis* [2015] UKSC 67 (upholding a penalty clause in a consumer contract) and *R (Keyu) v Secretary of State for Foreign and Commonwealth Affairs* [2015] UKSC 69 (rejecting a duty to investigate killings occurring in 1948). In the last of these cases the Supreme Court itself granted permission to appeal on additional grounds.

Success rates and references to Luxembourg

The success rate for appeals was in line with that in the two previous years: 40 of the 81 appeals were won, wholly or in part (50%), while in both 2014 and 2013 the success rates was 48%. In two cases there was no immediate outcome because references were made to the Court of Justice of the EU. This happened in *R (Hemming) v Westminster City Council* [2015] UKSC 25, a case on whether charges for certain licences violated the EU's rules on

providing services in an internal market, and in *Secretary of State for Work and Pensions v Tolley* [2015] UKSC 55, on whether Britain can impose residence conditions on persons claiming disability living allowance.

Judgments issued

Lord Neuberger delivered more judgments than anyone else (26) but Lords Mance and Carnwath delivered the highest number of judgments per case in which they sat: they each delivered 19 judgments in 29 cases. In all, 175 judgments were issued, an average of 2.2 per case. Thirteen were delivered by two Justices jointly, six of which involved Lord Reed and five Lord Neuberger. Only Lords Mance and Carnwath did not issue any joint judgments.

Once again there was a strong preference for deciding cases by sole judgments. This happened in 35 cases (44%), a slight fall from the figure for 2014 (36 out of 68 judgments, or 53%). Lady Hale and Lord Reed each delivered seven sole or joint-sole judgments and every Justice delivered at least one. The longest sole judgment was by Lord Reed in *R (King) v Secretary of State for Justice* [2015] UKSC 56, where he needed 127 paragraphs to explain that there had been procedural unfairness in the decision-making regarding segregation of two prisoners.

The longest judgment in any case was Lord Neuberger's in *Keyu*, mentioned above. He concluded that there was no legal requirement to hold an inquiry into the killing of 24 persons by British soldiers operating in Malaya. The six judgments in that case amounted to 313 paragraphs, but that was surpassed by the 316 paragraphs in *Cavendish Square Holding BV v Talal El Makdessi* [2015] UKSC 67, where in two conjoined appeals the Court unanimously upheld the validity of contractual penalty clauses. The shortest decisions of the year were in *Olympic Airlines Pension Trustees v Olympic Airlines SA* [2015] UKSC 27 (17 paragraphs) and *R (Hunt) v North Somerset Council* [2015] UKSC 51 (19 paragraphs).

Matters dealt with

As many as 49 cases (62%) were public law cases, in the sense that they were the result of judicial review applications, statutory appeals, claims brought under the Human Rights Act 1998, civil suits against public authorities under tort law or criminal prosecutions.

More specifically, as many as 16 cases centred on human rights arguments (including those based on equality and the right to information). At least 10 cases focused on contract or commercial law, while eight dealt with various aspects of tortious liability, including three on negligence. Six cases concerned tax law; EU law and immigration law each formed the kernel of five cases. There were three decisions each on company law, criminal law, environmental law and matrimonial law.

High profile decisions

The cases which attracted the greatest publicity, apart from *Evans* and *Keyu*, were: *O v Rhodes* [2015] UKSC 32, where the wife of an author failed to halt publication of his autobiography which she thought would damage the welfare of their child; *Wyatt v Vince*

[2015] UKSC 14, which allowed a divorce settlement to be reopened 19 years after it had been agreed because the husband had in the meantime become a multi-millionaire; *Sharland v Sharland* [2015] UKSC 60, where a husband's fraudulent non-disclosure of his financial affairs at the time of his divorce justified re-opening the financial settlement; and *Société Coopérative de Production SeaFrance SA v Competition and Markets Authority* [2015] UKSC 75, where Eurotunnel was denied the right to operate a ferry service between Dover and Calais because it would then have had too large a share of the cross-channel transport market.

In *Montgomery v Lanarkshire Health Board* [2015] UKSC 11 seven Justices abandoned the rule in *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582. This had said that whether a doctor's omission to warn a patient of the risks of treatment is a breach of a duty of care is to be determined by asking whether the omission was accepted as proper and not irrational by a responsible body of medical opinion. The Supreme Court held that patients today expect to be given more information so that they can decide for themselves how to proceed.

Other interesting decisions include *R (Lumsdon) v Legal Services Board* [2015] UKSC 41, where the new Quality Assurance Scheme for Advocates was held to be proportionate to the aims it pursues and the Court confirmed that the proportionality test in EU law is different from that in European Convention law. In *R (Rotherham Metropolitan BC) v Secretary of State for Business, Innovation and Skills* [2015] UKSC 6, the case in which the Court was most divided in 2015, it was held by 4 v 3 that the Council had not been improperly discriminated against as regards the allocation of EU Structural Funds when compared with regions in Scotland and Northern Ireland. In *Nzolameso v City of Westminster* [2015] UKSC 22 the Court held that Westminster had breached its duty under the s 208(1) of the Housing Act 1986 to provide the applicant with accommodation in her own area 'so far as reasonably practicable', a test which was said to import a stronger duty than simply being reasonable. And in *USA v Nolan* [2015] UKSC 63 the Court extended the reach of England's redundancy law to protect those working in this country for a foreign government, even though the EU's Court of Justice had previously ruled that dismissals at military bases do not fall within the scope of the relevant Directive on redundancy (98/59/EC).

Human rights cases

There were several examples of cases in which the European Convention on Human Rights was at issue. One was *Beghal v DPP* [2015] UKSC 59, concerning the legality of 'port powers' conferred on border police by Schedule 7 to the Terrorism Act 2000. With Lord Kerr dissenting, four Justices found the powers to be compatible with Articles 5, 6 and 8 of the ECHR. They distinguished the decision of the European Court of Human Rights in *Gillan v UK* (2010) 50 EHRR 1105 on the basis that safeguards set out in the 2000 Act made the port powers acceptable.

In a vital case for the government's welfare reform policies, *R (SG) v Secretary of State for Work and Pensions* [2015] UKSC 16, the Supreme Court ruled that the financial limit

imposed by the Benefit Cap (Housing Benefit) Regulations 2012 was not unlawful. The Justices agreed by 3 v 2 (Lady Hale and Lord Kerr dissenting) that the cap did not have an unjustifiably discriminatory impact on women in relation to the peaceful enjoyment of their possessions. But in another case on discrimination, *Mathieson v Secretary of State for Work and Pensions* [2015] UKSC 47 the Court struck down as discriminatory against children a rule denying the payment of disability living allowance if a child has been in hospital for more than 12 weeks. Likewise, in *R (Tigere) v Secretary of State for Business, Innovation and Skills* [2015] UKSC 57 the Court invalidated the so-called 'settlement' criterion for student loans because it breached the right to education under Article 2 of Protocol 1 to the ECHR.

It was a bad year in the Supreme Court for Article 8 of the ECHR. In *R (Ali) v Secretary of State for the Home Department* [2015] UKSC 68 the Court held Article 8 was not breached by the rule that the foreign spouse or partner of a British person settled in the UK must pass a test of competence in English before coming to live here, and in *R (Roberts) v Commissioner of Police of the Metropolis* [2015] UKSC 79 it was held that stop and search powers under section 60 of the Criminal Justice and Public Order Act 1994 are consistent with Article 8 even though they can be exercised in the absence of any suspicion. It remains to be seen if either of these decisions will be overturned in Strasbourg.

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